

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 843 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH SHANKERBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MS HANSABEN PUNANI for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of detention dated 4th September, 1998 made by the District

Magistrate, Rajkot under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The grounds of detention suggest that the petitioner is a head strong person and three offences for assault and causing injury have been registered against the petitioner on 3rd August, 1997, 31st January, 1998 and 22nd April, 1998. Further information in respect of the anti-social activities of the petitioner has been collected by the police by examining certain witnesses. All the witnesses have expressed their apprehension of retaliation and have agreed to give statements against the petitioner only on assurance of anonymity. The names and particulars of the said witnesses are, therefore, withheld. All the witnesses have stated that the petitioner is a head strong person and carries lethal weapons like knife, sword, gupti, etc. with him. Besides the general allegation regarding the petitioner's character, each of the witnesses has narrated an incident about the extortion committed by the petitioner. It is stated that some days before the date of recording of the statement, the petitioner had gone to the concerned witness's shop and had demanded some money. On refusal, the petitioner was enraged and forcibly robbed the concerned witness of his money. These incidents scared the passers-by who were frightened and ran away and also the shops in the area were immediately closed.

4. Learned advocate Mr. Bharda appearing for the petitioner has challenged the order of detention on the grounds (a) the activities of the petitioner as reflected in the FIRs lodged against him and the statements of the witnesses do not amount to breach of public order. At the most it can be said to be a problem of law and order; (b) there is no live link between the incidents in question and the order of detention; (c) the last of the offences registered against petitioner was on 22nd April, 1998, however, the order of detention has been made more than four months thereafter. The delay in itself evidence that the activities of the petitioner were not detrimental to the public order, and did not warrant order of detention; (d) the order of detention also suffers from the vice of non-application of mind inasmuch as though the petitioner has been sited to use knife during the commission of offences registered and unregistered, the detaining authority as referred to the lethal weapons like sword, gupti, rampuri knife, etc.

5. I have perused the grounds of detention and the

supporting material. The FIRs lodged against the petitioner refer to assault on the complainant. Neither of the offences can be said to have affected the 'public order'. Similarly, the offence of extortion referred to by each of the witnesses also is an offence against a particular individual. The witnesses' statements that the people started running away and the shops were closed do not inspire confidence. Besides, the said statements were recorded on 30th July, 1998 and were verified on 31st July, 1998. This hardly leaves any time for the concerned police officer to investigate the credibility of the witnesses and the genuineness of their statements. Even if such investigation is carried out, the same is not reflected from the records of the matter nor is there a counter-affidavit showing that such an exercise had been done. In absence of such material, it cannot be believed that the activities of the petitioner has affected the public order or that his activities are prejudicial to the maintenance of public order. However grave the offence may have been committed by the petitioner and however dangerous person he may be, unless his activities affect the public order adversely, a person cannot be detained under the Act. In the present case, since I am of the view that the petitioner's activities have not affected the public order, the order of detention is not tenable.

6. The petition is, therefore, allowed. The impugned order of detention dated 4th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be set free forthwith.

Prakash*